T. PONNAMALAM AND 11 OTHERS v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Pretheroe, J.) September 30, 1947]
[Negri Sembilan — Cr. Appeals Nos. 1 & 5 of 1947]

Penal Code, S. 447 — Criminal trespass with intent to annoy.

On a charge for criminal trespass by remaining on the complainant's land "with intent to annoy", it was proved that certain estate employees had threatened to strike. The manager gave them a month's notice and during its pendency they struck. He then dismissed them summarily and ordered them to leave the premises within 24 hours. The manager was within his rights to do so, but the employees did not realize this.

Held, that, as they believed they were entitled to remain till the expiration of the month's notice, they did not remain "with intent to annoy".

CRIMINAL APPEAL.

R. Ramani for the Appellants.

Kilner (D .P. P.) for the Respondent.

Pretheroe, J. : — Criminal Appeal No. 1 of 1947 and Criminal Appeal No. 5 of 1947 were identical in every respect (in fact one case had been split into two in the lower Court for the sake of convenience) so, with the consent of Counsel, the two appeals were consolidated and heard together.

The twelve appellants were tried and convicted on the following charge :—

> "That you on or about 31st September, 1946 (sic) at Ladang Geddes estate did commit criminal trespass by unlawfully remaining in the said estate with intent to annoy the Manager thereof, and that you thereby committed an offence under Section 447 of the Penal Code, Cap. 45".

All were convicted and each was bound over in the sum of $100 for three months to appear to be sentenced if and when called upon. It follows that this appeal is largely of an academic character.

Mr. Ramani represented all the appellants and based his arguments on three main grounds, but in view of the opinion I have formed it is only necessary to consider the first of those grounds viz. "there was no evidence that the appellants intended to annoy the person in possession of the estate".

For the purposes of this judgment the relevant facts of the case may be stated as follows :—

> On September 20th 1946 certain members of the Asiatic staff of Ladang Geddes Estate, which included the appellants, addressed a letter to the Manager of the Estate which contained a number of demands for improved conditions of service. That letter (Exhibit A) stated that unless all the demands were complied with within seven days the writers "would stay away from our estate duties after the 27th instant". The following day the Manager replied to each individual signatory of Exhibit A giving the addressee one month's notice of termination of his contract of service. On September 24th the Manager addressed another letter to each signatory of Exhibit A stating that the one month's notice mentioned in his previous letter would date from October 1st next. During this period the appellants had been on strike so on September 29th the Manager addressed another letter to the appellants (Exhibit D). That letter contained the following paragraph :—
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> > "Take notice, therefore, that unless you resume work within twenty-four hours of the receipt of this notice and continue with such work until 31st October 1946 your employment is at the time of such failure to comply absolutely terminated and you are within twenty-four hours to leave the estate premises together with all your possessions".

Though the action thus proposed to be taken by the Manager was clearly within his legal rights the appellants apparently did not appreciate the fact for on the same day they replied to the Manager stating, in effect, that as they were on strike he could not adopt the action he proposed. Correspondence between the appellants, or some of them, and the Manager continued until October 14th (Exhibit E).

At the trial evidence was given concerning several matters which "annoyed" the Manager but there is not the slightest indication that any of these matters occurred "on or about the last day of September" which was the date mentioned in the charge but on the contrary there are clear indications that some, if not all, of them occurred long after that date. In fact Counsel for the prosecution both in his opening address and final address referred to incidents spread over "some months". Perusal of the Exhibits satisfied me that the appellants remained on the Estate because of the mistaken opinion they all entertained that the Manager could not dismiss them while they were on strike and not with intent to annoy the Manager. Doubtless the conduct of the appellants on the last day of September, and on other occasions, did occasion the Manager a great deal of annoyance but that is beside the point. In a criminal prosecution for trespass it must be proved that the accused intended to annoy and that clearly was not proved at the trial in respect of the date mentioned in the charge. For this reason each appeal is allowed and each conviction is quashed. As the bonds have all expired by effluxion of time I make no order concerning them.

Appeal Allowed.
Convictions Quashed.